

DEPARTMENT OF ADMINISTRATION

CHAPTER 5

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Sub-Chapter 1

Special Purchasing Activities

2.5.101 DEFINITIONS (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.102 REQUISITION TIME SCHEDULE (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.103 REQUISITIONING PROCEDURES (PREPARATION AND SUBMISSION) (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.104 AGENCY PURCHASING AUTHORITY (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.105 TERM CONTRACTS (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.106 BID LIST (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.107 BID PREPARATION (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.108 SOLICITATION OF BIDS (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.109 AWARDING OF CONTRACTS (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.110 RECORDS OF BIDS (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.111 QUALITY CONTROL - RECEIPT AND INSPECTION (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.112 NONPERFORMANCE BY VENDOR (IS HEREBY REPEALED) (History: 18-1-402, MCA; IMP, 18-1-402, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1981 MAR p. 202, Eff. 3/13/81.)

2.5.113 NONPERFORMANCE BY STATE (IS HEREBY REPEALED) (History: 18-1-402, MCA; IMP, 18-1-402, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1981 MAR p. 220, Eff. 3/13/81.)

2.5.114 JOINT GOVERNMENTAL PURCHASE (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.115 NEGOTIATED REHABILITATION CONTRACTS (IS HEREBY REPEALED) (History: 18-5-102, MCA; IMP, 18-5-101 through 18-5-103, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.116 REFERENCED FORMS (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, 1978 MAR p. 717, Eff. 3/25/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.117 TRANSFER OF CONTRACTS OR COLLUSION - ADDITIONAL PENALTIES (IS HEREBY REPEALED) (History: 18-4-101, MCA; IMP, Title 18, chapter 4, MCA; NEW, Eff. 12/31/72; TRANS, Eff. 11/30/78; REP, 1983 MAR p. 1918, Eff. 12/30/83.)

2.5.118 MONTANA SMALL BUSINESS PURCHASING ACT (IS HEREBY REPEALED) (History: 18-4-101 and 18-5-304, MCA; IMP, Title 18, chapter 5, part 3, MCA; NEW, Eff. 6/17/74; TRANS, Eff. 11/30/78; AMD, 1990 MAR p. 1770, Eff. 9/14/90; REP, 1995 MAR p. 2241, Eff. 11/1/95.)

2.5.119 STUDENT ASSOCIATION PROCUREMENT EXEMPTION (IS HEREBY REPEALED) (History: 18-4-221, MCA; IMP, 18-4-132, MCA; NEW, 1990 MAR p. 1770, Eff. 9/14/90; REP, 2000 MAR p. 65, Eff. 2/1/00.)

2.5.120 THE STATE EMPLOYEES' CHARITABLE GIVING CAMPAIGN

(1) The state employees' charitable giving campaign (SECGC) may procure supplies and services costing \$25,000 or less using a purchase technique that best meets the campaign's needs. (History: 18-4-221, MCA; IMP, 18-4-221, MCA; NEW, 1999 MAR p. 1292, Eff. 6/18/99; AMD, 2002 MAR p. 2651, Eff. 9/27/02.)

Sub-Chapter 2

Regulation of Procurement Activities

2.5.201 DEFINITIONS In these rules, words and terms defined in Title 18, chapter 4, MCA, shall have the same meaning as in the statutes and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Agency" means an agency, bureau, commission, committee, council, department, governmental corporation, institution, legislative body, or other entity, instrumentality, or official of the executive, legislative or judicial branch of the state, including the board of regents and the Montana university system.

(2) "Advantageous" means a judgmental assessment of what is in the state's best interest.

(3) "Alternate procurement method" means a method of procuring supplies or services in a manner not specifically described in law, but instead authorized by the department under 18-4-302, MCA, following the requirements of 18-4-122, MCA.

(4) "Bid" means the executed document submitted by a "bidder" in response to an invitation for bid.

(5) "Brand name specification" means a specification that cites a brand name, model number, or some other designation that identifies a specific product as an example of the desired characteristics and/or quality of merchandise.

(6) "Central stores" means the proprietary program operated by the division which develops standard specifications, procures, warehouses and delivers certain supplies for state agencies. The bureau also operates the state and federal surplus programs for eligible donees.

(7) "Controlled items" means those supplies and services identified by the division as commonly used items which, when consolidated for purchasing purposes, result in volume adequate to obtain discounted prices.

(8) "Days" mean calendar days. In computing any period of time prescribed or allowed by these rules, the day of the event after which the designated period of time begins to run is not to be included, but the last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next business day.

(9) "Debar or debarment" means an action taken or decision made by the department, other than temporary determinations of nonresponsibility or suspension, that prohibits a vendor from proposing, bidding on, or receiving state contracts for a specific period of time or until certain conditions have been met.

(10) "Department" means the department of administration.

(11) "Descriptive literature" means information available in the ordinary course of business which shows the characteristics, construction, or operations of an item and enables the state to consider whether the item meets its needs.

(12) "Director" means the director of the department of administration.

(13) "Division" means the general services division of the department of administration.

(14) "Exclusive contract" means that state agencies must obtain the specified supply or service from the contract holder(s), unless the contract allows otherwise.

(15) "Exigency" means a purchase made without following normal purchasing procedures due to a sudden and unexpected happening or unforeseen occurrence or condition which requires immediate action.

(16) "FOB or f.o.b." means free on board; a term used in conjunction with an identified physical location to determine:

(a) the responsibility and basis for payment of freight charges; and

(b) the point at which title for the shipment passes from seller to buyer. Deliveries are usually FOB destination which means a shipment is to be delivered to the destination designated by the buyers.

(17) "Lease-purchase agreement" means a lease contract containing a purchase option in which the lessee's periodic payments or parts thereof may be applied to serve both as the rental obligation and as installments for acquiring ownership of the property upon lessee exercising the purchasing option; a conditional sales contract.

(18) "Non-exclusive contract" means that state agencies are not required to purchase this supply or service from the contract holder(s) and may obtain the necessary service or supply from a different source following the requirements of Title 18, MCA, and their agency procurement delegation agreement.

(19) "Offer" means proposal. "Offeror" means a person submitting a proposal when a procurement is made by a request for proposal process.

(20) "Office supply" means an item in the Central Stores Product Catalog, with prefixes beginning with the following numbers: 7001 through 7704, 7802 through 7904, 7907 and 9513.

(21) "Procurement" means acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. It includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration. It does not include the acquiring of supplies or services by gift.

(22) "Property and supply bureau" means the bureau of the division which is responsible for the central stores program and for operating the state and federal surplus programs for eligible donees.

(23) "Print and mail services" means that bureau of the division responsible for supervising and attending to all public printing of the state and handling and processing of state mail for the capitol complex.

(24) "Purchase order" means a document used to formalize a purchase contract with a vendor.

(25) "Request for information" means a document used to informally solicit information about a market or type of available supply or service where there is not enough information readily available to write an adequate specification or work statement.

(26) "Request for quote" means any source selection method allowed for in Title 18, MCA.

(27) "Requisition" means the document used to request that a contract be entered into for a specific need, and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by Title 18, chapter 4, MCA, or these rules.

(28) "Requisition time schedule" means a schedule issued by the state procurement bureau each year which designates the dates by which certain categories of controlled items must be requested from the bureau.

(29) "Resident bidder" means a bidder that meets the requirements of 18-1-103, MCA.

(30) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

(31) "Responsive bidder or offeror" means a person who has submitted a bid or offer that conforms in all material respects to the invitation for bids or request for proposals.

(32) "Restrictive specification" means specifications that unnecessarily limit competition by eliminating supplies and services that would be capable of satisfactorily meeting actual needs.

(33) "Solicitation" means an invitation for bid, a request for proposal, or any other document issued by the state for the purpose of soliciting bids or proposals to enter into a state contract.

(34) "Specifications" mean a detailed description of what the purchaser requires and what a bidder or offeror must offer to be considered for an award.

(35) "State procurement bureau" means that bureau of the division responsible for procuring or supervising the procurement of all supplies and services needed by the state excluding those services procured by the property and supply bureau and publications and graphics bureau.

(36) "Surplus supplies" are supplies no longer needed by an agency for its use in the discharge of its duties and responsibilities, excluding books.

(37) "Suspension" means an action taken by the division that temporarily prohibits a vendor from proposing, bidding on, or receiving state contracts.

(38) "Term contract" means a contract in which supplies or services are offered at a predetermined unit price for a specific period of time.

(39) "Total contract value" means the initial contract period and any options to renew.

(40) "Unit price" means the price of a selected unit of a supply or services; e.g., price per ton, foot, box.

(41) "Vendor" means a seller of supplies or services.

(42) "Vendors list" means a list maintained by the division listing the names and addresses of suppliers of various supplies and services from whom bids or proposals can be solicited. (History: 18-1-114 and 18-4-221, MCA; IMP, 18-4-221, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1987 MAR p. 2144, Eff. 11/28/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2000 MAR p. 65, Eff. 2/1/00; AMD, 2001 MAR p. 2009, Eff. 10/12/01; AMD, 2002 MAR p. 2651, Eff. 9/27/02.)

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

(1) The department is responsible for all procurements of all state supplies and services. All activities, including procedures, manuals, and forms, which govern such procurements will be prepared by or under the supervision of the department.

(2) The department's general services division will establish a vendors list, determine eligibility for residence preference of vendors for purchases made under Title 18, chapter 4, MCA, investigate complaints against vendors, and remove vendors from the state list as described in ARM 2.5.401, 2.5.402, 2.5.403, and 2.5.407.

(3) The department's general services division shall process requisitions for agencies, for items not delegated, in accordance with ARM 2.5.302.

(4) Except as indicated in ARM 2.5.301 the department's general services division will identify and purchase all controlled items.

(5) The department is responsible for the review and approval of the following equipment or service procurements regardless of delegated authority:

(a) all printing-related equipment involving duplicating, printing, bindery, and graphic arts for state agencies within a 10-mile radius of the capitol area--approval by print and mail services is required;

(b) information technology resources, including hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data--approval by the information technology services division is required, except as provided in 2-17-516, MCA;

(c) communications equipment and systems--approval by information technology services division is required; and

(d) mail equipment to be used within a 10-mile radius of the capitol area--approval by print and mail services is required.

(6) The department's general services division delegates its procurement authority as follows:

(a) except for controlled items, or as specified in (5), authority is delegated to all agencies for the procurement of supplies and services of \$5,000 or less;

(b) authority to purchase supplies and services when the total contract value is expected to be greater than \$5,000 may be granted or revoked after consideration of the following factors:

(i) the expertise of the potential delegate in terms of procurement knowledge and any specialized knowledge pertinent to the authority to be delegated;

(ii) the past experience of the potential delegate in exercising similar authority;

(iii) the degree of economy and efficiency to be achieved in meeting the state's requirements if authority is delegated; and

(iv) the consistency of delegation under similar circumstances.

(c) delegation greater than \$5,000 will be given through a written delegation agreement with the state procurement bureau. The written delegation shall specify:

(i) the activity or function authorized;

(ii) any limits or restrictions on the exercise of the delegated authority;

(iii) whether the authority may be further delegated; and

(iv) the duration of the delegation.

(7) The department's general services division will provide training to agencies on purchasing in accordance with delegated responsibilities.

(8) The department's general services division may perform reviews of agency purchasing procedures to insure compliance with the delegation agreement, these rules and Title 18, chapter 4, MCA.

(9) The department's property and supply bureau will dispose of, or supervise the disposal of, all surplus supplies belonging to the state as provided in ARM 2.5.701 and 2.5.702. (History: 18-4-221, MCA; IMP, 2-17-301, 2-17-512, 18-4-221 and 18-4-222, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1987 MAR p. 2144, Eff. 11/28/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 383, Eff. 2/25/94; AMD, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2000 MAR p. 65, Eff. 2/1/00; AMD, 2001 MAR p. 2009, Eff. 10/12/01.)

Sub-Chapter 3

Procedures for Using Agencies

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) Agencies may exercise authority to purchase non-controlled items with a total contract value of \$5,000 or less. Agencies may exercise delegated purchasing authority greater than \$5,000 and for exigency purchases in accordance with written delegation agreements described in ARM 2.5.202, with the Montana Procurement Act and with these rules.

(2) Unless specifically addressed in a delegation agreement, agencies must buy controlled items through the division except office supply items (as defined in ARM 2.5.201) supplied by central stores. These items may be purchased directly from vendors if the vendor's price is a publicly advertised price, established catalog price, or discount price offered to the purchasing agency and is less than the price available from the central stores program and the specifications, terms, conditions, and delivery of these items meet or exceed the central stores program.

(3) Delegation and competitive procedures are not necessary for the following purchases: salaries; fees for those professions exempted by 18-4-132, MCA; travel and per diem; retirement and social security payments; freight; landfill charges; supplies or services whose prices are regulated by the public service commission or other governmental authority; pastoral services; training; training and conference space rental and catering; and fresh fruits and vegetables. (History: 18-4-221, MCA; IMP, 18-4-221, 18-4-222 and 18-4-302, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1986 MAR p. 242, Eff. 2/28/86; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1987 MAR p. 2144, Eff. 11/28/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 383, Eff. 2/25/94; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2001 MAR p. 2009, Eff. 10/12/01.)

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DIVISION

(1) All agencies must complete the division's requisition form when a state purchase order or contract is required from the division. The requisition must be signed or electronically approved by an authorized agency official. Only items of a like nature (items ordinarily procurable from the same vendor) to be billed to one location shall be combined on one requisition. A separate requisition is required for each billing location. The requisition must be accompanied by specifications as described in ARM 2.5.501. Completed requisitions for coarse paper, computer paper, computer software supported by information technology services division, fine paper, forms, flags, fire extinguishers, janitorial supplies, and office supplies shall be forwarded to the property and supply bureau; requisitions for printing shall be forwarded to print and mail services. Completed requisitions for supplies and services (not listed above) shall be forwarded to the state procurement bureau.

(2) Agencies must obtain written approval as required for equipment described in ARM 2.5.202(5). Written approval must accompany the requisition.

(3) Upon receipt of a requisition, the division will initiate and schedule the solicitation. The division will send a copy of the solicitation to the requesting agency for review prior to bid opening.

(4) The division may cancel a requisition if deemed appropriate for reasons such as, but not limited to, the following. The requisition:

- (a) does not contain sufficient specifications;
- (b) cannot be processed in a timely manner;
- (c) has no evidence of approvals required in (2) above;

or

(d) does not comply with all requirements of these rules.

(5) Requisitions for supplies and services to be purchased with funds from a given fiscal year must be submitted to the general services division by May 1 of that fiscal year. (History: 18-4-221, MCA; IMP, 18-4-221, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 383, Eff. 2/25/94; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2000 MAR p. 65, Eff. 2/1/00; AMD, 2001 MAR p. 2009, Eff. 10/12/01.)

2.5.303 ENFORCING THE CONTRACT (1) Except for items purchased and warehoused by the division's central stores program, agencies are responsible for receiving supplies and services procured on their behalf by the department. Receiving means inspecting the supply or service and checking it against the contract to ensure that it is acceptable, complete and in compliance with the terms of the contract.

(2) Agencies should submit complaints about vendor performance to the division. The division will investigate complaints and attempt to resolve the problem to the agency's satisfaction. The division will notify the complaining agency of any action taken as a result of the complaint.

(3) The state of Montana reserves the right to assess liquidated damages for failing to comply with delivery requirements indicated in the bid or proposal. This sum may be deducted from vendor payment for failure to deliver when specified. Liquidated damages should not be punitive and should only be used where it is difficult to determine actual damages at the time of contracting. (History: 18-4-221, MCA; IMP, 18-4-221, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 2000 MAR p. 65, Eff. 2/1/00.)

Sub-Chapter 4

Procedures for Vendors

2.5.401 VENDORS LIST (1) The general services division maintains a vendors list for all supply and service commodities. Names and addresses on the vendors lists shall be available for public inspection but these lists shall not be used for private promotional, commercial or market purposes.

(2) To get on the vendors list, a vendor must register with the division on a form supplied by the division, including information sufficient to identify the supplies or services the vendor wishes to supply. (History: 18-4-221, MCA; IMP, 18-4-221, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 193, Eff. 1/28/97; AMD, 2000 MAR p. 65, Eff. 2/1/00.)

2.5.402 SUSPENSION OR DEBARMENT FROM CONTRACT ELIGIBILITY (1) The division has the authority to temporarily suspend a vendor from consideration for further contracts with the state if the division has probable cause to believe that the vendor has engaged in activities that could lead to debarment from contract eligibility. Debarment applies both to a firm or an individual. In the case of a firm, it may be applied against any or all businesses in which a firm has involvement or over which it has ownership or control. In the case of an individual, debarment may be applied to and enforced against any and all businesses in which the individual has any level of interest, ownership or control. The causes for debarment include the following:

(a) submission of a false affidavit for Montana residency;

(b) vendor is not responsible or responsive as defined in 18-4-301, MCA, and ARM 2.5.201 and 2.5.407;

(c) deliberate failure, without good cause, to perform in accordance with the specifications or within the time limit provided in a contract;

(d) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts;

(e) failure to comply with the provisions of the Unemployment Insurance Law, Title 39, chapter 51, MCA;

(f) failure to comply with the provisions of the Workers' Compensation Act, Title 39, chapter 71, MCA; or

(g) any other cause that the division determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity.

(2) If there is probable cause that any of the situations exist as set out in (1), the division shall mail a notice of suspension to the affected vendor or individual. The notice must state that:

(a) the suspension is for the period it takes to complete an investigation into possible debarment;

(b) bids or proposals will not be accepted from the suspended vendor or contracts awarded to the suspended vendor during the period of suspension;

(c) the suspension is effective upon the date of issuance of the notice of suspension and, unless the suspension is terminated by the division or a court, it will remain in effect for a period not to exceed 90 calendar days.

(3) If the division's investigation confirms a cause for debarment and the director agrees with the division's determination, a notice will be served upon the vendor by certified mail, return receipt requested. The notice will include:

(a) the pertinent facts supporting the alleged cause for debarment and the division's intent to remove the vendor from eligibility to contract with the state;

(b) notification of the vendor's right to a contested case hearing on the matter in accordance with the procedures set forth in Title 2, chapter 4, part 6, MCA.

(c) the term of the debarment and to what extent affiliates are affected. The debarment will be for a specific period of time or until certain conditions are met, at the discretion of the division.

(4) A written request for hearing must be received by the director from the vendor within 20 calendar days after the date of the mailing of the notice of debarment. Failure to timely request a hearing will constitute a waiver by the vendor of the opportunity for a contested case hearing and appeal and will result in the director or director's designee entering an order supporting the vendor's debarment from contracting with the state for a specified period of time or until certain conditions are met.

(5) Upon timely receipt of a written request for a contested case hearing, the director shall appoint a hearing examiner in accordance with the procedures set forth in Title 2, chapter 4, part 6, MCA, to hear evidence in the matter and come to a determination as to whether the facts support the decision to debar the vendor from contracting with the state for a specified period of time or until certain conditions are met.

(6) The division shall maintain a list of debarred vendors on its website at <http://www.discoveringmontana.com/doa/gsd>. (History: 18-4-221, MCA; IMP, 18-4-241 and 18-4-308, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2001 MAR p. 2009, Eff. 10/12/01; AMD, 2002 MAR p. 2651, Eff. 9/27/02.)

2.5.403 BIDDING PREFERENCES (IS HEREBY REPEALED)

(History: 18-1-114 and 18-4-221, MCA; IMP, 18-4-221, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1995 MAR p. 1931, Eff. 9/29/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2000 MAR p. 65, Eff. 2/1/00; REP, 2001 MAR p. 2009, Eff. 10/12/01.)

2.5.404 BID AND PROPOSAL PREPARATION

(1) Any exceptions to the specifications on the part of the bidder or offeror must be clearly indicated. Exceptions may be rejected.

(2) Each item on which a bidder or offeror submits a quotation must be new and unused and of the latest model or manufacture unless otherwise specified by the state. It shall be equal in quality and performance characteristics to that indicated in the invitation for bid or request for proposal.

(3) The price for each item must be stated and shall be clearly shown in the space provided on the form. Only one unit price shall be shown for each item unless specific provision is made in the form for an optional figure. The price of each item shall be extended to show the total price for the quantity requested. In case of error in extension, the unit price shall prevail.

(4) Item-by-item unit price bids must be submitted and will receive primary consideration for award. All-or-none bids may be submitted as alternatives and will be considered if clearly in the best interest of the state.

(5) Unless stated otherwise in the solicitation, payment will be due 30 days from:

(a) the receipt of a properly executed claim; or

(b) upon satisfactory receipt of the merchandise or service, whichever is later.

(6) Vendors may quote a cash discount based on early payment; however such discounts will not be considered in determination of low bid and payment terms will remain as in (5) above.

(7) Vendors will offer a firm price for 30 days after a bid or proposal opening, pending award, unless otherwise provided for in the invitation for bids or request for proposal.

(8) Unless otherwise specified in the invitation for bids or request for proposals, all bids and proposals shall show the delivered price FOB destination to the agency, including all transportation and handling charges. (History: 18-4-221, MCA; IMP, 18-4-221, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1997 MAR p. 193, Eff. 1/28/97; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2000 MAR p. 65, Eff. 2/1/00.)

2.5.405 BLIND VENDORS' BIDDING PREFERENCE (1) A blind person wishing to claim the vending facility preference must complete the determination form provided by the state procurement bureau. The form must be completed by an ophthalmologist, physician skilled in diseases of the eye or a state of Montana, department of public health and human services, visual services counselor.

(2) A determination form shall be submitted with each individual bid. The determination form shall be valid for six months. At the end of the six month period, a new determination form will be required or submitted with bids. A new determination form will be required for renewal of a contract if the contract renewal date exceeds six months from the completion date of the original determination form. (History: 18-5-501, MCA; IMP, 18-5-501, MCA; NEW, 1987 MAR p. 250, Eff. 3/31/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 2000 MAR p. 65, Eff. 2/1/00.)

2.5.406 VENDOR PROTEST (1) Except for small purchases or limited solicitations made pursuant to 18-4-305, MCA, a bidder, offeror, or contractor aggrieved in connection with the solicitation, award, or administration of a contract may protest to the department. Protests involving a solicitation or award must follow the provisions of 18-4-242, MCA. The protest must be in writing and state in detail all of the protestor's objections and allegations of violations of the Montana Procurement Act. The complete protest must be submitted to the department no later than the close of business 14 calendar days after the execution of the contract in question. The department may exercise its discretion when it decides what is in the best interest of the state.

(2) In the event the protest concerns the administration of an existing contract, the protesting party must follow the protest procedure set out in the contract. If there is no procedure stated in the contract, the protesting party must submit a protest in writing no later than 14 days after the cause of action, question, or dispute has arisen. If the protest is not resolved by mutual agreement, the department shall issue a written decision on the protest within 30 days after the receipt of the protest. In issuing the final decision, the decision must:

(a) state the reason for the action taken by the department with regard to the contract; and

(b) inform the aggrieved party of the party's right to pursue judicial review under Title 18, chapter 1, part 4, MCA.

(3) "Days" mean calendar days as defined in ARM 2.5.201.

(4) Any agency which exercises delegated authority from the department to engage in purchasing activities is responsible for responding to a protest or contested case hearing concerning the solicitation, award, or administration of a contract within their authority. (History: 18-4-221, MCA; IMP, 18-4-221 and 18-1-402, MCA; NEW, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1997 MAR p. 193, Eff. 1/28/97; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2000 MAR p. 65, Eff. 2/1/00; AMD, 2001 MAR p. 2009, Eff. 10/12/01.)

2.5.407 STANDARDS OF RESPONSIBILITY (1) Among factors that may be considered in determining whether the standard of responsibility has been met are whether a prospective contractor:

(a) has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements;

(b) has a satisfactory record of integrity;

(c) is qualified legally to contract with the agency;

(d) has not failed to supply any necessary information in connection with the inquiry concerning the responsibility; and

(e) has a satisfactory record of past performance. Nothing shall prevent the procurement officer from establishing additional responsibility standards for a particular procurement, provided that these additional standards are set forth in the solicitation, or from using past performance with the state of Montana as a reference.

(2) A prospective contractor must supply information requested by the procurement officer concerning the responsibility of the contractor in a timely and convincing manner. If the contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible.

(3) The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(a) evidence that the contractor possesses the necessary items;

(b) acceptable plans to subcontract for the necessary items; or

(c) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(4) If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding must be prepared by the procurement officer. The determination must be made part of the procurement file and a copy of the determination mailed to the affected bidder or offeror. (History: 18-4-221, MCA; IMP, 18-4-308, MCA; NEW, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 2000 MAR p. 65, Eff. 2/1/00.)

2.5.408 RECIPROCAL PREFERENCE (1) Section 18-1-102, MCA, requires a state agency to apply a reciprocal preference to the bid of a nonresident bidder equal to the percent of the preference given to the bidder in the state or country in which the bidder is a resident.

(2) A reciprocal preference is applied only to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in 18-2-401(9), MCA, but only in the event that federal funds are not involved in the anticipated purchase. In addition, a reciprocal preference is only applied if it will benefit a Montana resident bidder as defined in 18-1-103, MCA.

(3) If it is determined that the lowest responsive and responsible bidder would receive a percent preference in its resident state, that percent is added to the bid of the nonresident bidder. If the nonresident bidder is still the lowest responsive and responsible bidder after the preference adjustment has been made, the contract price is the price bid, not the adjusted price.

(4) A resident bidder must complete a bidder affidavit to verify resident eligibility. This affidavit must be on file with the department before a bid award can be made.

(5) The business name and federal identification number on the Montana resident affidavit must match the business name and federal identification number on the submitted bid documents in order to be considered for the application of reciprocal preference. (History: 18-1-114 and 18-4-221, MCA; IMP, 18-1-102, MCA; NEW, 2001 MAR p. 2009, Eff. 10/12/01; AMD, 2002 MAR p. 2651, Eff. 9/27/02.)

Sub-Chapter 5

General Bid Provisions

2.5.501 SPECIFICATIONS (1) Specifications shall clearly describe the state's requirements and allow for the obtaining of a supply or service which is adequate and suitable for the state's needs in a cost effective manner. Specifications may take into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs and shall permit maximum practicable competition consistent with this purpose.

(2) Specifications shall, to the extent practicable, emphasize functional or performance criteria and limit design or other detailed physical descriptions to those necessary to meet the needs of the state. To facilitate the use of the criteria an agency shall attempt to include as a part of their requisitions the principal functional or performance needs to be met and any compatibility requirements.

(3) In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

(4) Brand name items or descriptions may be used to indicate standards of quality, performance and/or use desired.

(5) Restrictive specifications shall not be used unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

(6) A specification for a specific brand of supplies or services may be used if the requesting agency has a documented need to maintain a standard of performance and compatibility with existing supplies, equipment or staff experience.

(7) The suggested format for specifications is as follows:

- (a) name of commodity;
- (b) purpose/use for commodity;
- (c) description of commodity;
- (i) each item of the description should fulfill a functional or physical requirement.
- (ii) if brand names are necessary to indicate quality levels, list an acceptable brand name.
- (iii) justification shall be provided and attached if a single brand is necessary.
- (iv) justification shall be provided and attached if the commodity is to be a sole source purchase.

- (d) description of other requirements, such as warranty, training, parts, manuals, service, etc.
- (e) description of any unusual conditions, such as installation, field tests, fiscal year funding source, etc.
- (f) date commodity is to be delivered.
- (g) location where commodity is to be delivered.
- (h) name, address and phone number of agency contact person.
- (i) receiving procedures (if testing, sampling or other evaluation will be performed when commodity is delivered to determine acceptability) must be described. (History: 18-4-232, MCA; IMP, 18-4-231 through 18-4-234, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 2000 MAR p. 65, Eff. 2/1/00.)

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

- (1) The state may, at its discretion, require bid or proposal security and/or contract performance security for the procurement of services and supplies.
- (2) Bid or proposal security and contract performance security requirements must be stated in the invitation for bids or the request for proposals.
- (3) The preferred types of security are bonds as described in 18-4-312(3)(a), MCA, and cash as described in 18-4-312(3)(c) and (d), MCA. The security must be payable to the state of Montana and the contract performance security must remain in effect for the entire contract period. The department will supply bid and proposal security bond and contract performance security bond forms when security is required. These are the only acceptable forms for surety bond or irrevocable letter of credit submission.
 - (a) If a certificate of deposit, money market certificate, cashier's check, certified check, irrevocable letter of credit, bank money order, or bank draft is determined to be acceptable, it must be issued from a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.
 - (b) Irrevocable letters of credit in excess of \$100,000 from a single financial institution will not be accepted as security for contracts.
 - (c) Facsimile, electronic or photocopy copies of bid or contract security are not acceptable.

(d) Certificates of deposit or money market certificates will not be accepted as security for bid, proposal, or contract security unless the certificates are assigned only to the state. All interest income from these certificates must accrue only to the contractor and not the state.

(4) Factors to consider in requiring bid/proposal security and in determining the amount of the security include:

- (a) type of commodity;
- (b) past state experience;
- (c) labor required to perform contract;
- (d) materials required to perform contract.

(5) All negotiable instruments provided as bid security and proposal security will be returned to the unsuccessful bidders/offerors within 30 days from date of the award.

(6) Factors to consider in requiring contract performance security and in determining the amount of security include:

- (a) type of commodity;
- (b) past state experience;
- (c) labor required to perform contract;
- (d) materials required to perform contract;
- (e) amount and number of subcontracts;
- (f) damages chargeable to the state if the contractor defaults;
- (g) estimated dollar amount of total contract.

(7) All contract performance security, except bonds, will be returned to the successful bidder or offeror upon completion of the contract, or at the discretion of the procurement official as documented to assure contract completion, or warranty period as declared within the contract. (History: 18-4-221, MCA; IMP, 18-1-201 and 18-4-312, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1986 MAR p. 242, Eff. 2/28/86; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2814, Eff. 10/28/94; AMD, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2000 MAR p. 65, Eff. 2/1/00; AMD, 2000 MAR p. 2962, Eff. 10/27/00; AMD, 2001 MAR p. 2009, Eff. 10/12/01; AMD, 2002 MAR p. 2651, Eff. 9/27/02.)

2.5.503 PUBLIC NOTICE (1) Invitation for bids and request for proposals shall be mailed, posted electronically, or otherwise furnished to a sufficient number of bidders or offerors required to secure competition.

(2) In the interest of economy, notices of availability of invitations for bids and request for proposals may be mailed as provided in (1) and/or advertised as provided in (4) instead of the complete invitation or request.

(3) Where appropriate the state may require payment of a fee or a deposit for supplying the invitation for bids or request for proposals.

(4) In the event that it is either not practicable or not advantageous to the state to furnish solicitations to all the vendors listed on the central vendors list for a specific supply or service, the purchasing agency may elect to shorten the list by selecting a sample of bidders or offerors. (History: 18-4-221, MCA; IMP, 18-4-303 and 18-4-304, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2000 MAR p. 65, Eff. 2/1/00.)

2.5.504 COST PRINCIPLES (IS HEREBY REPEALED) (History: 18-4-225, MCA; IMP, 18-4-225, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; REP, 1997, MAR p. 1816, Eff. 10/7/97.)

2.5.505 MISTAKES AND MINOR VARIATIONS IN BIDS AND OFFERS

(1) The procurement officer may allow a bidder or offeror to correct minor mistakes in a bid or offer if the mistake is clearly not attributed to an error in judgment, and the mistake and the intended correct bid or offer is clearly evident on the form of the document. Examples of correctable mistakes include, but are not limited to:

- (a) typographical errors;
- (b) errors in extending unit prices;
- (c) transposition errors;
- (d) arithmetical errors; and
- (e) signature omitted.

(2) The procurement officer may permit a bidder or offeror to withdraw a low bid or proposal if:

(a) a mistake is clearly evident on the face of the document but the intended correct information is not similarly evident; or

(b) the bidder or offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made.

(3) The division administrator of the general services division or designee may waive minor variations in a bid, offer, or solicitation. (History: 18-4-221, MCA; IMP, 18-4-303 and 18-4-304, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1988 MAR p. 1521, Eff. 7/15/88; AMD, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2000 MAR p. 65, Eff. 2/1/00; AMD, 2001 MAR p. 2009, Eff. 10/12/01.)

2.5.506 ANTICOMPETITIVE PRACTICES (IS HEREBY REPEALED)
(History: 18-4-221, MCA; IMP, 18-4-314, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; REP, 1990 MAR p. 1770, Eff. 9/14/90.)

2.5.507 PREQUALIFICATION OF VENDORS (1) Vendors may be prequalified for particular types of supplies and services under the following conditions:

(a) a need exists to limit a solicitation to those vendors who meet statutory or licensing requirements applicable to the solicitation; or

(b) a need exists to minimize the time necessary to verify vendor qualifications which otherwise would jeopardize the timely award of contracts.

(2) The documentation for vendor prequalification must reflect the capability of the selected vendor(s) to adequately perform the contract. The criteria for prequalification include, but are not limited to, technical expertise, experience, quality of performance, location, availability, rates, prices, financial stability, past performance, catalogs, or other criteria relevant to a particular procurement.

(3) Prequalification must be approved by the division.

(4) Prequalification of a prospective vendor does not necessarily represent supply or service acceptability or a finding of responsibility. (History: 18-4-221, MCA; IMP, 18-4-309, MCA; NEW, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.508 REQUESTS FOR INFORMATION (1) A request for information, as defined in ARM 2.5.201, may be used by an agency only to obtain preliminary information about a market or the type of available supply or service, where there is not enough information readily available to write an adequate specification or work statement. A request for information may not be used as a source selection method to procure a supply or service. (History: 18-4-221, MCA; IMP, 18-4-221, MCA; NEW, 2000 MAR p. 65, Eff. 2/1/00.)

2.5.509 LATE BIDS OR PROPOSALS (1) Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the specified office by the specified time.

(2) Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested. (History: 18-4-221, MCA; IMP, 18-4-221, MCA; NEW, 2000 MAR p. 65, Eff. 2/1/00; AMD, 2001 MAR p. 209, Eff. 10/12/01.)

Sub-Chapter 6

Types of Bids

2.5.601 COMPETITIVE SEALED BIDS (1) "Sealed bid" is the preferred method of competitive procurement for state supply contracts and service contracts estimated to exceed the amount designated in ARM 2.5.603 as a small purchase or a limited solicitation. Sealed bids shall be solicited with an invitation for bid.

(2) The invitation for bid shall include the following:

(a) Instructions and information to bidders concerning the bid submission requirements, including the time and date established for bid opening, the address of the office to which bids are to be delivered, and any other special information;

(b) The purchase description, delivery or performance schedule, and any inspection and acceptance requirements not included in the purchase description; and

(c) The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

(3) The invitation for bid may incorporate documents by reference if the invitation for bid specifies where such documents can be obtained.

(4) Addenda, if any, will be provided to all vendors who received an invitation for bid, or notice of the addenda will be placed in the electronic format designated for giving public notice.

(5) Upon receipt of a bid or a facsimile transmission of a bid, an employee of the agency other than the procurement officer will cause it to be time-stamped and stored in a secure place until the time and date set for bid opening. In order to be considered timely, a complete printed bid response must be delivered to the specified destination by the specified time.

(6) Bids shall be opened publicly at the time, date and place designated in the invitation for bid.

(7) The division may request state agencies to perform tests or to provide technical expertise to determine product or service acceptability on bids received.

(8) Following determination of product acceptability, bids will be reviewed to determine which bidder offers the lowest cost to the state in accordance with the specifications set forth in the invitation for bids, including the reciprocal preference provisions described in ARM 2.5.408.

(9) Nothing in this rule shall be deemed to permit contract award to a bidder submitting a higher quality item than that designated in the invitation for bid if such bidder is not also the lowest bidder as determined under (8).

(10) Multiple award contracts are allowable if determined to be in the best interest of the state.

(11) The discretion of the division or the head of a purchasing agency, will be used to resolve tie bids.

(12) A supplier's currently advertised or established catalog price, which is available to the public, may be accepted as a bid subject to the following conditions:

(a) The advertisement or established catalog price must be received and time-stamped by the procurement officer authorized to enter into contracts prior to or at the bid opening. In no event will catalog or advertised prices be accepted after a bid opening.

(i) A copy of the catalog or advertised price and specifications may be attached to the requisition received by the procurement official; or

(ii) The procurement official or the requesting agency may locate catalog or advertised prices; or

(iii) A vendor may submit catalog or advertised prices as a bid.

(b) The catalog or advertised price must meet or exceed the specifications, terms, and conditions and be the lowest acceptable bid.

(13) The currently advertised or established catalog price is tabulated and recorded as a bid from the supplier for the inspection of all bidders.

(14) Only the procurement official of the division or purchasing agency can make the final determination of acceptance or rejection of the bids or publicly advertised or established catalog prices.

(15) The division or using agency may use federal supply schedules established by the general services administration as one source of a bid. The federal supply schedule item must meet or exceed the specifications, terms, and conditions of the invitation for bid and must be the lowest acceptable bid in order to be selected. The pertinent supply schedule must be recorded as a bid from the supplier for the inspection of all bidders. (History: 18-4-221, MCA; IMP, 18-4-303, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1986 MAR p. 242, Eff. 2/28/86; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1987 MAR p. 2144, Eff. 11/28/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 383, Eff. 2/25/94; AMD, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2000 MAR p. 65, Eff. 2/1/00; AMD, 2001 MAR p. 2009, Eff. 10/12/01.)

2.5.602 COMPETITIVE SEALED PROPOSAL (1) "Competitive sealed proposal" is a procurement option allowing the award to be based upon an evaluation process using stated criteria to arrive at a contract that will be the most advantageous to the state.

(2) Competitive sealed proposals, solicited through a request for proposals may be practical when one or more of the following conditions exist:

(a) the contract needs to be other than a fixed-price type;

(b) oral or written discussions may need to be conducted with offerors concerning technical and price aspects of their proposal;

(c) offerors may need to be afforded the opportunity to revise their proposal, including prices;

(d) award may need to be based upon a comparative evaluation as stated in the request for proposals of differing price, quality, and contractual factors in order to determine the most advantageous offering to the state. Quality factors include technical and performance capability and the content of the technical proposal; or

(e) price will only be one of several criteria considered in determining an award, if evaluated at all.

(3) The request for proposals must be prepared in accordance with ARM 2.5.601(2) through (4) and must also include:

(a) a statement that discussions may be conducted with one or more offerors who submit proposals, but that proposals may be accepted and a contract issued without such discussions; and

(b) the criteria that will be used to evaluate the proposals.

(4) Facsimile transmission of a proposal is only acceptable on an exception basis with prior approval of the procurement officer.

(5) Proposals shall be time-stamped upon receipt and held in a secure place by an employee of the agency until the established time.

(6) After the time established for receipt of proposals, a procurement officer shall open the proposals and inspect the proposals for material not available for public inspection pursuant to 18-4-304 and 18-4-308, MCA. The procurement officer will remove this material and then make the remainder

of the proposal available for public inspection. Offerors submitting a proposal containing a claim to shield confidential information pursuant to 18-4-304(4(a), (b) and (d), MCA, must include a statement that attests to the offeror's acceptance of the legal and financial responsibility for defending the claim. In addition, any claim to shield trade secret material must be made by an offeror's legal counsel using the affidavit form prescribed by the division.

(7) For the purpose of conducting discussions, proposals shall be initially classified as:

(a) responsive; or

(b) non-responsive.

(i) Proposals may be found non-responsive any time during the evaluation process if:

(A) any of the required information is not provided;

(B) the submitted price is found to be excessive or inadequate as measured by criteria stated in the request for proposals; or

(C) the proposal is not within the plans and specifications described and required in the request for proposal.

(ii) Non-responsive proposals will be eliminated from further consideration.

(8) Discussions may be held with one or more offerors to:

(a) promote understanding of the state's requirements and the offerors' proposals; and

(b) facilitate arriving at a contract that will be most advantageous to the state taking into consideration all criteria set forth in the request for proposals.

(c) Discussions may include oral presentations, interviews, demonstrations, responses to specific questions, modifications, and negotiations.

(d) At the discretion of the procurement officer, one or more offerors may be provided an opportunity to submit a best and final offer if additional information is required in order to reach a final decision. Unless the request for proposals so states, a best and final offer may not be requested from the offeror(s) on price alone.

(9) References and the credit and financial responsibility of the offerors may be verified as appropriate.

(10) The evaluation shall be based on the evaluation criteria set forth in the request for proposals. The evaluators shall exercise discretion in assigning points or value to a proposal, which involves a judgmental assessment of the evaluation criteria. The award must be made to the responsive and responsible offeror whose proposal best meets the evaluation criteria.

(11) The department reserves the right to negotiate with one or more offerors for the award of a contract that is most advantageous to the state. The department reserves the right to award a contract without negotiations or to reject any or all proposals.

(12) Interested parties are responsible for making their own arrangements to make copies of proposal materials.

(13) Multiple award contracts are allowable if determined to be in the best interest of the state. (History: 18-4-221, MCA; IMP, 18-4-304, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1987 MAR p. 2144, Eff. 11/28/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 1997 MAR p. 193, Eff. 1/28/97; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2000 MAR p. 65, Eff. 2/1/00.)

2.5.603 SMALL PURCHASES OR LIMITED SOLICITATIONS OF SUPPLIES AND SERVICES (1) The division or state agency may procure supplies or services when the total contract value will be \$5,000 or less using a purchase technique that best meets the agency's needs.

(2) The division or state agency, if authorized in a written delegation agreement, may procure supplies or services with a total contract value between \$5,001 and \$25,000 using a limited solicitation procedure. This procedure requires a minimum of three viable written or oral quotations, if available. The limited solicitation procedure must be documented and, wherever practical, use the department's vendor list.

(3) This rule does not apply to controlled items purchased through exclusive term contracts, requisition time schedules, the central stores program or print and mail services unless specifically delegated in a written delegation agreement to the agency.

(4) Procurements shall not be artificially divided or sequenced to avoid using the other source selection methods set forth in Title 18, chapter 4, MCA. (History: 18-4-221, MCA; IMP, 18-4-305, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1986 MAR p. 242, Eff. 2/28/86; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1987 MAR p. 2144, Eff. 11/28/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 383, Eff. 2/25/94; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2001 MAR p. 2009, Eff. 10/12/01.)

2.5.604 SOLE SOURCE PROCUREMENT (1) The provisions of this rule apply to all sole source procurements of \$5,000 or greater unless exigency procurements described in ARM 2.5.605 are necessary.

(2) Sole source procurement is permissible under the following circumstances:

(a) the compatibility of current services or equipment, accessories, or replacement parts is the paramount consideration;

(b) there is no existent equivalent product; or

(c) only one source is acceptable or suitable for the supply or service item.

(3) For purchases with a total contract value greater than \$5,000, the determination as to whether a procurement shall be made as a sole source shall be made by the division, unless specifically authorized in a written agency delegation agreement. In cases of reasonable doubt, competition should be solicited. A request by a state agency to the division that a procurement be restricted to one vendor must be accompanied by a written justification.

(4) The procurement officer may conduct negotiations, as appropriate, as to price, delivery, and terms.

(5) For the purpose of complying with 18-4-306, MCA, a record of sole source procurements greater than \$5,000 shall be maintained by the procuring agency using the "Sole Source Procurement Justification" form provided by the department.

(6) The following items do not require sole source justification and shall be purchased directly by the agency regardless of delegated authority:

(a) professional licenses;

(b) dues to associations;

(c) renewal of software license agreements; or

(d) purchase or renewal of maintenance agreements for software or hardware; or

(e) publications available only from a single supplier.

(History: 18-4-221, MCA; IMP, 18-4-306, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1987 MAR p. 1961, Eff. 10/30/87; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 383, Eff. 2/25/94; AMD, 1995 MAR p. 2241, Eff. 11/1/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97; AMD, 2000 MAR p. 65, Eff. 2/1/00; AMD, 2001 MAR p. 2009, Eff. 10/12/01; AMD, 2002 MAR p. 2651, Eff. 9/27/02.)

2.5.605 EXIGENCY PROCUREMENTS (1) An exigency procurement of \$5,000 or greater shall be limited to those supplies or services necessary to meet the exigency, as defined in ARM 2.5.201.

(2) The determination as to whether a procurement shall be made as an exigency procurement shall be made by the agency. The determination must be in writing and must state the basis for an exigency procurement and for the selection of a particular vendor.

(3) The procedure used shall be selected to assure that the required supplies or services are procured in time to meet the exigency. However, such competition as is practicable shall be obtained.

(4) A record of each exigency procurement shall be made as soon as practicable and shall set forth:

- (a) the vendor's name;
 - (b) the amount and type of the contract;
 - (c) a listing of the supplies or services procured under the contract; and
 - (d) the written documentation required in (2).
- (History: 18-4-221, MCA; IMP, 18-4-133, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1985 MAR p. 244, Eff. 3/15/85; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2481, Eff. 10/28/94; AMD, 1997 MAR p. 193, Eff. 1/28/97.)

2.5.606 PROCUREMENT OF USED EQUIPMENT (1) Purchase of used equipment is allowable if in the best interest of the state.

(2) Unless justified as sole source or exigency, the award of the contract will be made by identifying the requirements and proceeding with the competitive bidding or proposal process, pursuant to ARM 2.5.601.

(3) Criteria to consider in making this determination include:

- (a) consideration of the type, use and life expectancy of new versus used equipment;
- (b) comparing the purchase price of new and used equipment;
- (c) comparing the price and general condition of used equipment among several vendors;
- (d) consideration of the freight charges and FOB point;
- (e) investigation of manufacturer or brand and availability of warranty, maintenance, and parts;
- (f) clarification of payment terms. (History: 18-4-221, MCA; IMP, 18-4-221, MCA; NEW, 1986 MAR p. 242, Eff. 2/28/86; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1994 MAR p. 2481, Eff. 10/28/94.)

2.5.607 PROCUREMENT FROM SHELTERED WORKSHOPS OR WORK ACTIVITY CENTERS (1) State agencies may purchase supplies and services from sheltered workshops as defined in 18-5-101, MCA. Such purchases are exempt from competitive bidding laws and rules and may be made directly.

(2) The division will maintain a list of certified sheltered workshops or work activity centers, as defined in 18-5-101, MCA, located in the state. The list will include the supplies and services provided by each. The list will be available to user agencies. (History: 18-5-102, MCA; IMP, 18-5-102 and 18-5-103, MCA; NEW, 1986 MAR p. 242, Eff. 2/28/86; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1995 MAR p. 1788, Eff. 9/15/95; AMD, 1997 MAR p. 1816, Eff. 10/7/97.)

2.5.608 DIRECT NEGOTIATION (1) When none of the invitations for bids or requests for proposals received in response to a valid solicitation are from a responsible and responsive bidder or offeror, as defined in 18-4-301, MCA, the procurement officer may:

(a) cancel and reissue the solicitation. If the procurement officer reissues the solicitation, the procurement officer shall attempt to increase the number of potential vendors and may modify any specification in the original solicitation to enhance vendor participation; or

(b) if approved by the department, directly negotiate with a vendor or vendors if the procurement officer determines that a second or subsequent solicitation would also be unsuccessful. The procurement officer may conduct negotiations as appropriate, as to price, delivery, and terms.

(2) Subject to conditions in (1) and the intent of 18-4-122, MCA, the determination as to whether a procurement will be made by direct negotiation must be in writing, must state the basis for the direct negotiation and for the selection of a particular vendor, and must be approved by the department. (History: 18-4-133 and 18-4-221, MCA; IMP, 18-4-133, MCA; NEW, 2001 MAR p. 2009, Eff. 10/12/01.)

2.5.609 ALTERNATIVE PROCUREMENT METHODS (1) An agency may request authorization from the department to pursue an alternative procurement method for obtaining a supply or service.

(2) If an alternative procurement method is approved, the department shall:

(a) conduct the procurement on behalf of the agency;

(b) notify potential vendors of the alternative procurement method being used for the supply or service; and

(c) make a written determination as to the success of the method. (History: 18-4-221, MCA; IMP, 18-4-302, MCA; NEW, 2001 MAR p. 2009, Eff. 10/12/01.)

Sub-Chapter 7

Surplus Property

2.5.701 AUTHORITY TO DISPOSE OF SUPPLIES (1) State agencies may not transfer, sell, trade, or otherwise dispose of supplies owned by the state without written authorization of the property and supply bureau. A department or legislative or judicial entity may transfer surplus supplies between the various units of that department or legislative or judicial entity.

(2) State agencies shall notify the division's property and supply bureau of all surplus supplies on forms available at the bureau. The entity may suggest a dollar value per item or per lot, but the suggestion does not constitute the minimum sale or transfer amount. The figures are not public information prior to transfer or sale. (History: 18-4-226, MCA; IMP, 18-4-226, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1990 MAR p. 1770, Eff. 9/14/90.)

2.5.702 DISPOSITION OF SURPLUS SUPPLIES (1) The division's property and supply bureau shall transfer surplus supplies to other state agencies and other units of government.

(2) Surplus supplies must be offered to the public through competitive sealed bids, public auction, established markets, or posted prices. It is recognized, however, that some types and classes of items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the division may employ such other means, including appraisal, if the division makes a written determination that such procedure is advantageous to the state. On sales greater than \$300, only United States postal money orders, certified checks, cashier's checks or business checks may be accepted.

(3) Competitive sealed bidding:

(a) If a sale is to be made by competitive sealed bidding, notice of the sale must be given at least 10 days before the date set for opening bids by:

(i) mailing a request for sale bids to prospective bidders, including those bidders on lists maintained at the property and supply bureau for this purpose; and

(ii) newspaper advertisement may also be used.

(b) The request for sale bids must list the supplies offered for sale; designate their location and how they may be inspected; and state the terms and conditions for bid opening. Bids shall be opened publicly.

(c) Award must be made in accordance with the provisions of the request for sale bids to the highest responsive and responsible bidder, if the price offered by such bidder is acceptable to the division. If the price is not acceptable, the division may:

(i) reject the bids in whole or in part and negotiate the sale, but the negotiated sale price must be higher than the highest responsive and responsible bidder's price; or

(ii) resolicit bids.

(4) Auctions: Supplies may be sold at auction. When appropriate, an experienced auctioneer should be used to cry the sale and assist in preparation of the sale. The solicitation to bidders should stipulate all the terms and conditions of any sale.

(5) Established markets: Established markets are places where supplies such as livestock and produce are regularly sold in wholesale lots, and prices are set by open competition. Surplus supplies may be sold in established markets for such supplies.

(6) Posted prices: Surplus supplies may be sold at posted prices as determined by the division when such prices are based on fair market value and the sale is conducted pursuant to written procedures established by the division.

(7) Trade-ins: Surplus supplies may be traded-in only if the division determines the trade-in value is expected to equal or exceed the value estimated to be obtained through the sale or other disposition of the supplies.

(8) The state may permit local governments, non-profit organizations, or private businesses to participate in an auction or other appropriate marketing methods. (History: 18-4-226, MCA; IMP, 18-4-226, MCA; NEW, 1983 MAR p. 1918, Eff. 12/30/83; AMD, 1990 MAR p. 1770, Eff. 9/14/90; AMD, 1997 MAR p. 193, Eff. 1/28/97.)

Sub-Chapter 8

Federal Surplus Property Program

2.5.801 ADOPTION OF STATE PLAN OF OPERATION - FEDERAL SURPLUS PROPERTY (1) As authorized by 18-5-202, MCA, the department of administration (hereinafter department) hereby adopts and incorporates by reference the "State of Montana, Federal Surplus Property Plan of Operation in Compliance with 41 FR 101-44 and Public Law 94-519" (referred herein as the State Plan of Operation) promulgated by the department and filed with the general services administration of the United States government on July 1, 1977, and as revised March 19, 1984, pursuant to section 201(j)(4) of the Federal Property and Administrative Services Act of 1949 (40 USC 484). The state plan of operation establishes the operating procedure and practices to be followed by the department for the fair and equitable distribution of federal surplus personal property to those units of state and local government and certain nonprofit, tax-exempt, educational and health institutions as are determined to be eligible to receive such surplus personal property under section 203(j) of the act. Copies of the state plan of operation may be obtained from the Department of Administration, General Services Division, P.O. Box 200137, Helena, Montana 59620-0137. (History: 18-5-202, MCA; IMP, 18-5-202, MCA; NEW, 1984 MAR p. 956, Eff. 6/29/84; AMD, 1995 MAR p. 2241, Eff. 11/1/95.)